IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15108 of 2004
with
CIVIL APPLICATION NO. 9355 of 2004,

SPECIAL CIVIL APPLICATION No. 15109 of 2004
with
CIVIL APPLICATION No. 9357 of 2004
and
SPECIAL CIVIL APPLICATION No. 80 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKOR SANJAYSINH BALDEVJI & ORS.

Versus

STATE OF GUJARAT

Appearance:

MR KB PUJARA for Petitioner No. 1
MR HASURKAR, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-2,4
MS NAYNABEN K GADHVI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 22/02/2005

COMMON ORAL JUDGEMENT

Rule. Learned Counsel Shri Ketan Dave for Ms. Naynaben K. Gadhvi waives service of notice of rule on behalf of respondent No.3. Learned AGP Mr. Hasurkar waives service of notice of rule for rest of the respondents. As common issues are involved, at the joint request of the learned Counsel for the parties, these petitions are taken up for final disposal today.

2. In these petitions, the short question that has come up for consideration of the Court is the extent of preference that a candidate for the post of Vidhya Sahayak would receive in case he holds the necessary qualifications of sports participation as provided by the State Government.

3. Short facts necessary for deciding these petitions can be stated at the outset. The petitioners in this group of petitions had applied for the post of Vidhya Sahayaks, pursuant to an advertisement dated 14.7.2004, issued by the respondent No.3. All the petitioners belong to Socially, Educationally Backward Classes and therefore, claim appointments against vacancies reserved for the said category. The petitioners also claim to have necessary sports certificate to enable them to avail of the benefits prescribed by the State Government through various Circulars. It is the case of the petitioners that the petitioners had participated in sports events at the national level which are recognized by the State Government and that would qualify the petitioners to receive additional marks as prescribed by the State Government in it's G.R dated 25.2.1980 and 1.8.1990.

4. In so far as the question of participation of the petitioners in the sports events is concerned, there is no factual dispute raised by the respondents. With respect to the category of sports and the level at which the petitioners have performed also there is no dispute raised by the respondents. Thus by virtue of the certificates produced by the petitioners, they would be governed by the above mentioned Circulars of the Government and would be qualified to receive the additional marks envisaged in the said Circulars.

5. The only question that is required to be considered is the exact weightage that the petitioners

would be entitled to receive by virtue of their participation in the sports events.

6. By G.R dated 25.2.1980, the State Government provided for certain additional percentage of marks to be assigned to those candidates who have participated in certain specified sports events at a certain level of competition. By subsequent Circular dated 1.8.1990, there was certain modifications made in the earlier G.R dated 25.2.1980 and some more sports events were added for receiving benefits of such additional percentage of marks.

7. The central controversy involved in these petitions is upto what extent the said benefit of additional marks would be assigned to the candidates who fulfil the requirements of such Circulars. It has been pointed out by the learned Counsel for the petitioner that uptill the present selection process, State Government as well as the respective District Panchayats were following the clarification issued by the Government and the candidates with sports certificates were receiving full 5% additional marks during the selection process undertaken by the Government and the Panchayats. Counsel for the petitioners points out a communication dated 7.1.2002 written by the Additional Secretary to the Education Department in which also it is stated inter-alia that as per the provisions of Circular dated 25.2.1980, the requirement for selection is to be brought down by 5% in favour of sports participants. It was therefore clarified that to consider the cases of sports participants, wherever the merit list ends, the same has to be reduced by further 5% and the cases of such sports persons are to be considered and once they are brought in the merit list they should be issued appointment orders according to their position in the merit number. On the basis of the said communication, learned Counsel for the petitioners submits that the petitioners would be entitled to receive full 5% of additional weightage on account of their sports participation. He submits that not only on the basis of said communication dated 7.1.2002, but independently also all Panchayats were uniformly following the system of giving full 5% of additional marks to the sports candidates.

8. Learned Counsel for the petitioners further points out that clarification issued by the Director of Primary Education on 9.11.2004 is not in consonance with the Circulars. He further submits that the said clarification is apparently issued long after the selection process was commenced and the petitioners were

in fact issued the interview call letters. He submits that therefore the clarification which came to be issued after the petitioners were issued the call letters could not have been applied atleast in the current selection process. He additionally submits that the clarification is applied only in one or two districts and all other districts in the State of Gujarat have atleast for the earlier selection processes followed the earlier pattern of giving full 5% weightage to the sports persons. He therefore, submits that the petitioners in the respondent No.3 District cannot be discriminated against and atleast for the current selection process the modified method of calculating the weightage for the sports candidate should not be applied.

9. Appearing for the Government, learned AGP Mr. Hasurkar opposes the petitions. He submits that there is no possibility of any ambiguity in the plain language used by the Government in the Circular dated 25.2.1980. He supports the stand adopted by the Government in its affidavit in reply filed through General Administration Department. He however, concedes that the same has not been followed uniformly by all districts in the previous academic year and in the selection undertaken during the said period. He also is not in a position to controvert the say of the learned Counsel for the petitioners that such modified formula is applied only in one or two districts for the previous year.

10. For the respondent No.3 in each of the petition, learned Counsel Shri Ketan Dave submitted that they have followed the directives of the Government. On the basis of the affidavit-in-reply though he opposes the petitions, he also points out that there are existing vacancies in the district for the post of Vidhya Sahayaks, which have remained unfilled on account of various reasons including non-reporting for duty by the selected and appointed candidates.

11. Prior to issuance of clarification dated 9.11.2004, it appears that the sports candidates were given full 5% weightage for selection process. The same is sought to be modified and it is being conveyed by the said clarification that the correct method of giving preference to the sports persons would be to give preference upto 5% of the marks received by the candidates in question. Here also there appears to be some variance in the interpretation and in the affidavit-in-reply filed by the State Government through General Administration Department, it is sought to be canvassed that the correct method of giving preference to

sports men and women would be to suppress the standards by 5% of marks received by the last selected candidate in the merit list.

12. The G.R dated 25.2.1980 provides for certain additional marks to be assigned to sports candidates. We are not concerned with the provisions contained in Clause 2(a) of the said Circular and we would be governed in the present cases by the provisions made in Clause 2(b) of the said Circular, which provides that wherever the appointments are made through oral interview, and the selection depends on the marks received in the SSC and other examinations, in such cases (sports candidates) could be considered by reducing by not more than 5% of the merit requirement of the candidates who are found to be meritorious. In other words, the said clause provides for reducing the requirement of merit in favour of sports persons by not more than 5% of the marks received by the meritorious candidates. To put it differently, the relaxation provided for by the State Government in its G.R dated 25.2.1980 would ensure that a sports person could compete with other selected candidates by receiving additional marks which could not exceed 5% of the marks received by the last selected candidate. In view of this discussion, I find that the stand of the General Administration Department expressed through the affidavit-in-reply is in consonance with the G.R dated 25.2.1980. To the said extent even the communication dated 9.11.2004 of the Directorate of Primary Education does not appeal to me.

13. This however, does not solve the issues arising in these petitions. As noted earlier, prior to the current selection process all districts in the State of Gujarat were following the pattern of giving full 5% weightage to the candidates having sports certificates. This is sought to be changed in isolated districts as in the present one and one or two other districts. All other districts have continued to follow the same pattern for the selection held in the previous year. There is some divergence of opinion even between the stand of the General Administration Department and that adopted by the Directorate of Primary Education. The clarification of the Directorate of Primary Education was made available to the district in question long after the advertisement was issued and call letters were also issued in favour of the candidates applying the old formula of giving full 5% weightage to the sports persons. It would therefore be highly inequitable to permit the respondent No.3 to change the parameters for selection at least for the current selection process. When other districts have

followed different parameters, in overwhelming majority; when the respondent No.3 had also issued call letters in favour of the petitioners on the basis of earlier formula and when there was no clarity and uniformity even between different limbs of the Government, it would be highly unfair, unjust and inequitable to shut out the case of the present petitioners atleast for the present selection process.

14. Thus, while upholding the interpretation of the G.R dated 25.2.1980, as adopted by the GAD in its affidavit-in-reply, I find that it would not be equitable and just to reject the candidature of the petitioners on the basis of the modified formula. In the affidavit-in-reply filed by the respondent No.3 it is clearly pointed out that there are vacancies available even after fully operating select list drawn by the respondent No.2. The question of granting equitable relief in favour of the petitioners would have taken a somewhat different turn if vacancies were not available and all appointments had been made and posts already filled-up. In the present case however, when I find that the vacancies are still available, it would be just and proper that the petitioners receive full benefit of the conclusions that I have reached hereinabove.

15. To reiterate, though I find that the interpretation as adopted by the GAD in its affidavit-in-reply concerning provisions of G.R dated 25.2.1980 are just and proper, the respondent No.3 ought not to have applied the same with respect to the selection process in question for the foregoing reasons, which I have indicated above. In view of the conclusion and in view of the fact that sufficient number of vacancies are still available, the respondent No.3 is directed to consider the case of the petitioners by applying full 5% weightage in addition to the marks that they have received and complete the selection process in their cases. If at the end of such exercise petitioners deserve a place in the select list, they shall be granted appointment to the available vacancies with effect from the due dates, but without any wages for the past period.

16, In Special Civil Application No. 80 of 2005, the respondent No.3 has joined the issue about the percentage of marks that the petitioner therein has received. Since it is purely mathematical formula, it is not necessary for me to dilate on that issue in the present order. However, if there is a genuine calculation mistake on the part of the respondent No.3, it would be open for the petitioner therein to point out the same to the concerned

respondent and I am sure that such a grievance will be taken into account.

17. Before concluding, I would like to observe that the interpretation adopted by the Government of the relevant provision of Circular dated 25.2.1980 should be circulated amongst all Districts so that different Districts do not follow different rules. This would ensure uniformity and avoid undue litigation.

18. In the result, the petitions succeed to the above extent. Rule made absolute to the above extent with no order as to costs. Direct service permitted.

19. In view of the above, there shall be no order on the Civil Applications, which stand disposed of accordingly.

(Akil Kureshi, J.)
*/Mohandas